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In re Application
Serial No. 09/470,240 :
Klein :Petition Decision
Filed 7 January 2000 :
Attorney Docket No.:1038-1000 MIS:jb :

This is in response to the petition filed on 23 October 2003 requesting review of an Examiner's action under 37 CFR 1.181. The delay in acting upon this petition is regretted.

A review of the file shows that the Examiner first identified the new matter in an Office action dated 21 February 2002, as amendment to the sequence of Figure 5 to recite a new nucleotide at positions 540 and 630 and to the resulting amino acid at the position corresponding to site 630 of the nucleic acid sequence. The Examiner then maintained this objection in the Office action dated 9 September 2002.

The petition was filed 19 months after the Examiner first made the objection and 13 months after the examiner maintained the objection.

37 CFR 1.181 states in part

(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

The examiner is correct in that objections are not appealable, but should be handled by Petition.

DECISION

The petition is **DISMISSED** as untimely for the reasons set forth above.

Applicants remain under obligation to reply to the Defective Notice of Appeal filed 23 September 2003.

Any request for reconsideration of this decision must be made by a renewed petition and must be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely.

Should there be any questions with regard to this letter, please contact Special Program Examiner Julie Burke by letter addressed to the Director, Technology Center 1600, PO Box 1450, Alexandria VA 22313-1450 or by telephone at (571) 272-0512.



Jasmine Chambers
TC1600 Group Director